Indian Tribal Governments

ITG News

Keeping First Nations Informed

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Message From The Director

Many of you have probably read about the growth in abusive schemes that began two decades ago with what we now call “tax shelters”. While the IRS was successful in addressing those initial schemes, we are now experiencing a new generation of individuals promoting opportunities to avoid taxes through structured transactions that “sound too good to be true” and often are.

Unfortunately, Indian tribal governments are not immune from these promoters. In fact, tribal governments have recently helped the IRS identify several promoters that are attempting to use tribal sovereignty and some of the special tax benefits that tribes enjoy, to enrich a select group of individuals they represent. These promoters may offer the tribe a limited benefit that is marketed as being at no cost or risk to the tribe. In some cases the promoters of these schemes may be invisible to tribal leadership, since they hide behind shell corporations and/or attempt to conduct transactions directly with tribal employees.

The simple fact is that these schemes do bring risk to the tribe. Even where there may be no direct financial risk, the risk to the tribe’s reputation is significant and the risk to any tribal employee who becomes involved in such a scheme can be substantial.

The office of Indian Tribal Governments has initiated a program to work with tribes to address this area and ensure that these abusive schemes do not gain a foothold in Indian Country. Our Abuse Detection and Prevention Team (ADAPT) is already developing actions to identify abusive schemes being promoted to tribes, and is working with tribes to address them. Our goal is to protect the interests of all governments through mutual actions that will eliminate these schemes. Our web site will contain information on identified schemes, as well as a method to report any concerns to the ADAPT group. We look forward to partnering with tribes and other interested parties in this effort.

Christie Jacobs

Inside this issue:

To add your name or e-mail address to our mailing list, please contact us via e-mail at Carol.A.Czolowski@irs.gov, or call Carol Czolowski at (801) 620-5048

Federal Tax Calendar for Second Quarter 2004

April 2004

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2 * Payroll date 3/27-3/30	3
4	5	6	7 * Payroll date 3/31-4/2	8	9 * Payroll date 4/3 -4/6	10
11	12 Employees report tips from March	13	14 * Payroll date 4/7-4/9	15 ** Monthly Deposit for March	16 * Payroll date 4/10-4/13	17
18	19	20	21 * Payroll date 4/14-4/16	22	23 * Payroll date 4/17-4/20	24
25	26	27	28 * Payroll date 4/21-4/23	29	30 * Payroll date 4/24-4/27	

May 2004

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3	4	5 * Payroll date 4/28-4/30	6	7 * Payroll date 5/1 -5/4	8
9	10 Employees report tips from April	11	12 * Payroll date 5/5 -5/7	13	14 * Payroll date 5/8 -5/11	15
16	17 ** Monthly deposit for April	18	19 * Payroll date 5/12-5/14	20	21 * Payroll date 5/15-5/18	22
23	24	25	26 * Payroll date 5/19-5/21	27	28 * Payroll date 5/22-5/25	29
30	31					

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule.
** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

June 2004

SUN	MON	TUE	WED	THU	FRI	SAT
		1	2	3 * Payroll date 5/26-5/28	4 * Payroll date 5/29-6/1	5
6	7	8	9 * Payroll date 6/2-6/4	10 Employees report tips from May	11 * Payroll date 6/5-6/8	12
13	14	15 ** Monthly deposit for May	16 * Payroll date 6/9-6/11	17	18 * Payroll date 6/12-6/15	19
20	21	22	23 * Payroll date 6/16-6/18	24	25 * Payroll date 6/19-6/22	26
27	28	29	30 * Payroll date 6/23-6/25			

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule.
**= Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed

Return Filing Dates

By April 30th
File Form 941 for the first quarter of 2004. If the tax was deposited in full and on time, file by May 10th.

File Form 730 on applicable wagers accepted during March 2004.

By June 1st
File Form 730 for applicable wagers accepted during April 2004.

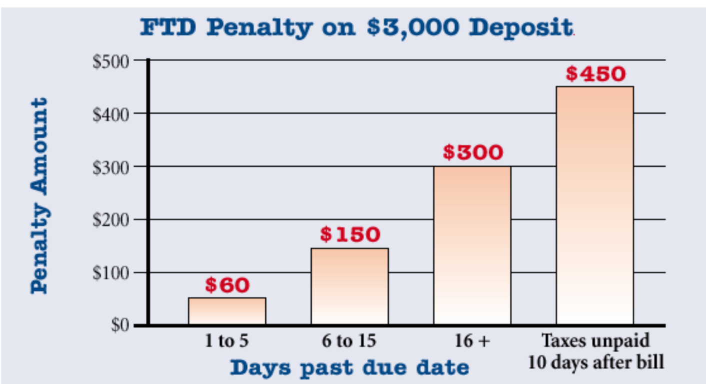
By June 30th
File Form 730 for applicable wagers accepted during May 2004.

The Basics of Federal Tax Deposits

When you pay your employees, you do not pay them all of the money they have earned. The income tax and the FICA (Social Security and Medicare) that you withhold from your employees' paycheck are part of their wages. Even though you pay these withheld taxes to the United States Treasury, they are still your employee's earnings.

The portion of your employee's wages that you withhold for transmitting to the Treasury is called "Trust Fund" taxes. Through this withholding, your employees pay their contributions toward their retirement benefits (Social Security and Medicare) and the income taxes reported on their own tax returns. Your employees' trust fund taxes, along with the employer's matching share of FICA, are paid to the Treasury through the Federal Tax Deposit (FTD) System.

You should deposit these amounts on time for the employees' benefit. Postponing the tax deposit isn't the same as using your own money to make late payment on a phone bill or to a supplier. Congress established large penalties for employers that delay in turning over employment taxes to the Treasury. If you delay paying that money, the more it could cost you.



To illustrate how much it will cost you to make your Federal Tax Deposits late, consider this example. Assume your monthly liability for withheld income tax, Social Security and Medicare tax, and your employer's matching share totals $3,000 per month. Review the graph to see how quickly a penalty for making late deposits increases. As you can see, using your trust fund taxes to finance your other operating expenses can be very costly.

The FTD penalty is computed by multiplying the amount of tax you have underpaid by a penalty percentage rate based on how many days late you make the deposit. These penalties for late deposits are expensive. For amounts not properly or timely deposited, the penalty rates are shown on the table at the right.

Failure to Deposit Penalty Percentage Rates

Late Period/Reason for penalty	Penalty Percentage Rate
Deposits made 1-5 days late	2%
Deposits made 6-15 days late	5%
Deposits made 16 + days late	10%
Taxes unpaid after the 10th day	15%
Deposit made at unauthorized financial institution	10%
Amounts subject to Electronic Deposit requirements but not deposited via EFTPS	10%

In addition to the deposit penalties, you will also be subject to penalties if you late file your Form 941or don't pay the amount due on the return as shown on the table at the right.

Other Penalties		
	RATE	MAXIMUM
Late Filed Tax Return	5% per month of unpaid tax	25%
Late Paid Tax	½% per month of unpaid tax, then 1% after Notice of Intent to Levy	25%

Please review your payroll procedures to determine if you are making timely deposits. When you make timely deposits, you avoid penalties. When you avoid penalties, money is available for other governmental needs. Don't let penalties get out of hand. They **are** avoidable!!!

Summary of steps to avoid Failure to Deposit Penalties:

Make deposits on or before the deposit due date.

- Make your deposit any time between the payroll liability incurred date and the deposit due date.
- You are not required to wait until the due date nor will you receive a penalty for making deposits prior to the due date.
- Mail or deliver the Form 8109 deposit coupon with your payment so that it will arrive at the bank no later than the deposit due date.
- For deposits made by EFTPS to be on time, you must initiate the transaction **at least one business day before the date the deposit is due**.

Make deposits with an authorized depositary.

Include a summary of your tax liability with Form 941.

- Monthly depositors use line 17 of Form 941.
- Semiweekly depositors use Schedule B, Employer's Record of Federal Tax Liability.

Who must make deposits?

Deposits are **required** if you file Form 941 with $2,500 or more in taxes per quarter.

What taxes must be deposited?

- Income tax withheld from your employees
- FICA (Social Security and Medicare) tax withheld from your employees
- FICA (Social Security and Medicare) — the employer's share

Important Difference

- Making deposits and filing employer returns with payments are not the same.
- Taxes are **reported** by filing, and **paid** by depositing.

When should you make Form 941 tax deposits?

- If your total taxes for the quarter are less than $2,500, they can be paid with the return or deposited by the return due date.
- If your total taxes on Form 941 are $2,500 or more, you'll need to determine which deposit schedule to follow.
- The easiest/safest way is to make a deposit the **same day** you make payroll or anytime **no later than the deposit due date.**

What is your deposit schedule?

To determine your deposit schedule, review the amounts of tax reported on your earlier Forms 941. This will establish your "lookback period" which is the twelve month period ending June 30 of the previous year. For 2004 taxes, you need to look back from July 1, 2002 to June 30, 2003. In other words, you look back the last two quarters of 2002 and the first two quarters of 2003.

After you determine your lookback period, you need to total the taxes reported on Forms 941, Line 11, during this period. Once you determine your total tax during the lookback period, it is easy to determine your deposit schedule:

Lookback Period for 2004 Deposits	
July 1, 2002 through June 30, 2003	
2002	**2003**
Third & Fourth Quarters	**First & Second Quarters**
07/01/2002 through 09/30/2002	01/01/2003 through 03/31/2003
10/01/2002 through 12/31/2002	04/01/2003 through 06/30/2003

- If total taxes are $50,000 or less, you make **Monthly Schedule Deposits.**
- If total taxes are greater than $50,000, you make **Semiweekly Schedule Deposits.**

Example for Monthly Schedule Depositor	
Quarter ending	**Tax from Line 11, Form 941**
September 30, 2002	$ 8,385.44
December 31, 2002	11,216.18
March 31, 2003	13,455.26
June 30, 2003	15,407.64
Total Taxes in Lookback Period	**$ 48,464.52**

In the above example, the total taxes during the lookback period are **$48,464.52**. Since this amount is less than $50,000, the employer is a monthly schedule depositor for 2004.

Example for Semiweekly Schedule Depositor	
Quarter ending	**Tax from Line 11, Form 941**
September 30, 2002	$ 15,253.76
December 31, 2002	13,461.56
March 31, 2003	11,769.52
June 30, 2003	14,760.94
Total Taxes in Lookback Period	**$ 55,245.78**

In the above example, the total taxes during the lookback period are **$55,245.78**. Since this amount is more than $50,000, the employer is a semiweekly schedule depositor for 2004.

Summary of Steps to Determine Your Deposit Schedule

- Identify your lookback period.
- Add the total taxes you reported during the lookback period.
- Determine your deposit schedule; if total taxes are:
  - $50,000 or less, you make **Monthly Schedule Deposits.**
  - Greater than $50,000 you make **Semiweekly Schedule Deposits.**

Employers are required to determine their own deposit schedule. Deposit schedules remain the same for the entire calendar year unless you meet one of the exceptions explained on the following page.

Exceptions to Deposit Schedules

1. $100,000 Next Day Deposit Rule:

- If, during any **deposit period,** you accumulate a tax liability of $100,000 or more, you must make a deposit by the next banking day.
- Once you meet the $100,000 next-day rule, you follow the semiweekly schedule for all deposits less than $100,000. You are a semiweekly schedule depositor for the rest of the year and during all of the next calendar year.

2. Banking Days

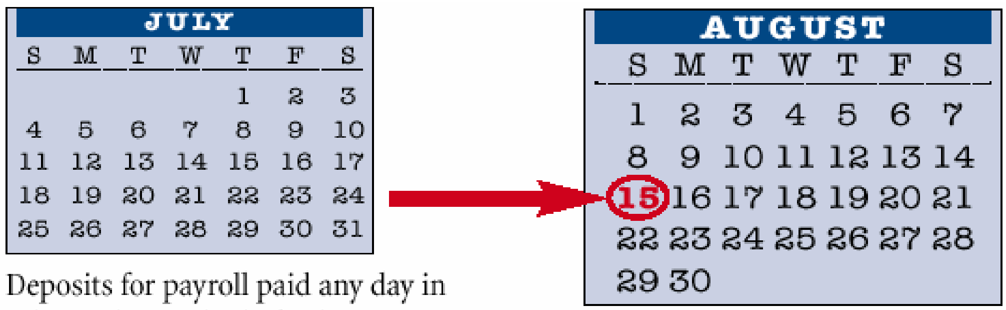
- If your deposit is due on a non-banking day, make it by the close of the next banking day.
- Federal and state bank holidays, Saturdays and Sundays are non-banking days.

Description of Deposit Schedules

Now that you know how to determine if you are a **Monthly** Schedule Depositor or a **Semiweekly** Schedule Depositor, you are ready to learn the deposit requirements for each schedule.

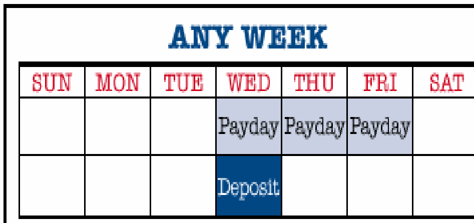
Monthly Schedule Depositors —

Deposit each month's taxes by the 15th of the next month.



Deposits for payroll paid any day in July are due on (or before) August 15.

For wages paid Saturday, Sunday, Monday or Tuesday, deposit taxes by following Friday.



For wages paid Wednesday, Thursday, or Friday, deposit taxes by following Wednesday.

Semiweekly Schedule Depositors —

Most employers will make deposits on Wednesdays or Fridays, depending on when you pay payroll.

Where are deposits made?

You make federal tax deposits at any authorized financial institution, such as a commercial bank. As an alternative, you may mail the deposits to:

Financial Agent
Federal Tax Deposit Processing
P.O. Box 970030
St. Louis, MO 63197

You must not send these tax deposits directly to the IRS because this will delay getting the money into the Treasury. If you do send the deposit to the IRS, you may get a penalty.

How are deposits made?

Deposits can be made:

1. manually with Form 8109 Federal Tax Deposit (FTD) Coupon, or
2. electronically using your phone or computer.

How are deposits made manually?

1. Complete a Federal Tax Deposit Coupon, Form 8109.
2. Make the check or money order payable to the depositary (bank).
3. Mail or deliver the Form 8109 deposit coupon with your payment so that it will arrive at the bank no later than the deposit due date.

How do I make electronic federal tax deposits?

Using your phone or personal computer and the **Electronic Federal Tax Payment System** (EFTPS), you can arrange for your tax deposits to be transferred directly from your existing bank account to the Treasury. This system is an alternative to using the paper-based FTD coupon method for making deposits. Any federal taxes deposited using an FTD coupon can be deposited electronically. For deposits made by EFTPS to be on time, you must initiate the transaction at least one business day before the date the deposit is due.

Do I need to obtain special equipment in order to use EFTPS?

No, you may use any telephone or your personal computer to input your tax deposit information. If you choose to use your personal computer, you will be provided with free EFTPS software to process the transfer of funds or pay on-line from our website at: **www.eftps.gov**.

How do I sign up for EFTPS?

Enroll online at **www.eftps.gov** or call 1-800-945-8400 or 1-800-555-4477 to request an enrollment form. You complete the enrollment form and return it to the EFTPS Enrollment Center. The center, in turn, will send you a Confirmation Packet which includes a step-by-step Payment Instruction Booklet and the telephone numbers for accessing EFTPS.

Electronic deposit requirement.

You **must** make electronic deposits using the Electronic Federal Tax Payment System (EFTPS) in 2004 **if:**

- Your total deposits of employment taxes in 2002 were more than $200,000 or
- You were required to use EFTPS in 2003.
- You should receive a notice by mail from the IRS if you are required to use EFTPS.

Is there a difference in how I complete the Form 941?

- **Monthly depositors** must enter the Monthly Summary of Federal Tax Liability on the face of the tax return by completing **line 17** of Form 941.
- **Semiweekly depositors** must submit a **Schedule B**, Employer's Record of Federal Tax Liability as an attachment to Form 941. Semiweekly depositors **do not** complete line 17 of Form 941.
- **Note:** *These are a summary of your tax liability, **not** a summary of deposits made.*
  *If line 13 is less than $2,500, **do not** complete line 17 **or** Schedule B (Form 941).*
  *If you fail to complete a summary of your tax liability, **you may get a penalty.***

???Questions???

Contact your ITG Specialist or our toll-free call site at 877-829-5500

Tip Reporting Agreements – Minimizing Financial Risk

Many tribes have enterprises that employ individuals who receive tip income. These tribal enterprises range from food service establishments to some of the largest casinos in the world. Handling large sums of cash presents many risks, and tribes go to great lengths to minimize any risk of loss.

Unfortunately some tribes have not taken steps to minimize risk that can be present from unreported tip income. Employees who do not fully report their tips to their employer can create a future tax liability for both themselves and their employer. If unreported tip income is discovered as a result of an IRS examination, both the employee and employer could face significant assessments of tax, penalties, and interest. These assessments can be particularly troublesome for the employer who generally has not anticipated the liability.

In order to reduce the potential for unreported tip income, the IRS has developed a Tip Compliance Program. This program combines employee education with a written agreement that calculates tip rates by occupations and work shifts. Employees are openly encouraged to participate in the program. As part of the agreement, the IRS guarantees that it will not examine tip income reporting by those employees as long as they report tips at or above the established rates. Two variations of these agreements are available – the Tip Rate Determination Agreement (TRDA) and the Gaming Industry Tip Compliance Agreement (GITCA). Interested employers have their choice between the two.

An example of the elimination of risk can be seen from one tribal casino that entered into an tip compliance agreement. The amount of tip income being reported by their employees rose by over 400% subsequent to the agreement. By entering into the agreement, the casino eliminated a potential unforeseen liability of $1.5 million dollars per year. While they paid FICA tax on the additional tips being reported, that liability could be predicted and planned. This enabled them to adequately forecast their revenues and expenses with a significant reduction to future risk of further tax assessments. Similar benefits exist for employees. One benefit is that they will not be examined on tip income. They also receive a full and accurate reporting of their income which can be a benefit for programs that are based on income levels. This includes pensions, 401(k) plans, and loans.

If your tribe has employees who report tips, and you have not joined our Tip Compliance Program, we encourage you to contact your Indian Tribal Governments Specialist.

Our web site at www.irs.gov/tribes contains an extensive listing of Frequently Asked Questions that may assist you in resolving issues including employment tax questions. The site also allows for the submission of e-mail inquiries if you cannot locate an answer or cannot reach your assigned ITG Specialist for assistance.

Gaming Industry Tip Compliance Agreement Program

On May 1, 2003, the IRS issued Revenue Procedure 2003-35 (Internal Revenue Bulletin 2003-20 dated May 19, 2003) announcing the Gaming Industry Tip Compliance Agreement Program. This new program allows the employer and IRS to establish minimum tip rates for tipped employees in specific occupational categories. The program also specifies a threshold level of participation by the employer's employees. Employers who participate in the program will execute a Gaming Industry Tip Compliance Agreement which will supersede any existing tip compliance agreement. Terms for the agreement will be for three years, except for new properties, or properties that have not had an agreement with the IRS. Those agreements could be for a shorter period of time. It should be noted that the new program is not replacing the Tip Rate Determination Agreement Program but is offered as an alternative to it. Entities that are currently covered by a TRDA can convert to the new GITCA if they so desire and should contact their ITG Specialist to initiate the process.

The following chart illustrates the features of these two programs.

	Tip Rate Determination Agreement (TRDA)	**Gaming Industry Tip Compliance Agreement (GITCA)**
Term of Agreement	As stated in agreement, with a current sunset provision of 12/31/07	3 years, but may be extended by mutual agreement
Effective Date	First day of the next calendar quarter following signature by both parties	On date agreed within the body of the GITCA
Reopening of Rates	On application by casino by 9/30 of each year	Mutual agreement of both parties at any time during the term of the agreement
Threshold to Maintain Agreement	75% of eligible employees must participate to guarantee TRDA maintained	50% of eligible employees must participate to guarantee GITCA maintained
IRC 3121(q) Relief	Guaranteed prospective only	If 75% participation is achieved at any time during the life of the GITCA, retroactive protection is given for the full term of the GITCA. In addition, 3121(q) assessments can only be based on audit results of employees, or 4137 reporting by an employee
Form 8027 Filing	Required for all food and beverage operations and employees	Not required for food and beverage operations and employees if records are given to the Service that includes all relevant data
Shift/Hour/ Occupational Category Reporting Requirements	Required annually on non-participating employees	Annual reporting required on <u>all</u> employees
Tip Rate Calculation/ Methodology	By occupation and shift - occupational exclusions only by choice	By occupation and shift - housekeeping occupations cannot be included
Tip Audits of Participating Employees	No guarantee of retroactive relief	No retroactive audit unless the employee declined prior participation in a TRDA or GITCA
Termination of Agreement	At any time by the casino, or by IRS if less than 75% participation at the end of a calendar year, failure to comply with agreement terms, or where an enforcement proceeding exists	By joint agreement of both parties, or by IRS if participation is less than 50%, the employer fails to attempt to raise participation to 75%, or where an enforcement proceeding exists

Update on the Development of an IRS/Tribal Consultation Policy

We continue to move forward in the process to develop an IRS/Tribal Consultation Policy having completed 12 regional listening meetings with tribal representatives during 2003. A summary of the input received at those meetings was posted to the ITG web site at www.irs.gov/tribes in January with a link to submit any further comments. Once the period for submitting further input has passed, we will undertake an initial draft that will be further shared for comment. It is our hope to have a final draft policy for review by late 2004.

We welcome your input so that we can create the best possible policy. Visit our web site at www.irs.gov/tribes to review the input to date and offer us your thoughts before April 30th.

Tribal Enterprise Structure Issues

We have recently encountered several situations where tribes have formed business structures that may unnecessarily subject their earnings to federal income tax. While federally recognized Indian tribes are not subject to federal income tax, if they form a state-chartered corporation that is not specifically exempted from income tax under the Internal Revenue Code (such as IRC 501(c)(3) entities), the entity must file a Form 1120 and pay federal income tax on any net earnings.

In addition, we have encountered situations where tribes have formed subchapter S corporations where the tribe is a shareholder. While the Service may acknowledge this status and process the resultant Form 1120-S that is filed, the simple fact is that tribes cannot be shareholders in subchapter S corporations. Once these situations are discovered, the entity must be converted to a C corporation, and the resultant Form 1120 will subject the tribe to federal income tax on any net earnings.

If you have either of these situations present within your tribal enterprises, and you wish to restructure them to mitigate the potential tax problem, you should contact your ITG Specialist so that we can take prompt action to effect corrections and limit any potential interest and penalties. In addition, the sooner that a problem is identified, the sooner that you can change the structure of the entity to avoid the future federal tax consequences.

Tribal Employment Tax Guide Now Available

Publication 4268, our on-line Employment Tax Guide for Tribal Governments, is now available at our web site at www.irs.gov/tribes.

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- **Call: Customer Account Services** toll free **877-829-5500**
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